



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Foster *et al.*

Appl. No.: 09/937,484

§ 371 Date: January 23, 2002

For: **Use of a Lectin or Conjugates for  
Modulation of C-Fibre Activity**

Confirmation No.: 2134

Art Unit: 1654

Examiner: Audet, Maury A.

Atty. Docket: 1581.0870000/RWE/ALS

### **Reply to Restriction Requirement**

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Sir:

In reply to the Office Action dated January 29, 2004 ("Office Action"), requesting an election of one invention to prosecute in the above-referenced patent application, Applicants hereby make the following election and provide the following comments.

#### ***Information Disclosure Statement***

Applicants note that copies of the documents which were filed with the Information Disclosure Statements (IDSs) of 9/26/01 and 4/18/02 were not found in the file<sup>1</sup>. Additional copies of these documents are submitted herewith.

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<sup>1</sup> The Office Action refers to IDSs filed on 1/23/02 and 4/13/02. Office Action, page 2, first paragraph. However, no IDSs were filed on these days. Applicants believe that the Examiner is referring to the two IDSs filed on 9/26/01 and 4/18/02.

***Election***

Applicants hereby provisionally elect to prosecute the invention of Group III, represented by claims 39-42. Applicants also elect the specific conjugate comprising *Erythrina cristagalli* lectin.

As part of this requirement, the Examiner required that Applicants provide additional information regarding the elected compound. Office Action, page 8, last paragraph. Structural information for *Erythrina cristagalli* lectin is provided, for example, by Iglesias, J. L. *et al.*, *Eur. J. Biochem.*, 123: 247-252 (1982) ("Iglesias *et al.*"), which is referred to in Applicants' Specification at page 18, lines 5-6. Iglesias *et al.* was previously cited as document AR4 in Applicants' Information Disclosure Statement filed on September 26, 2001, and an additional copy is provided herewith.

This election is made without prejudice to or disclaimer of the other claims or inventions disclosed. This election is made *with* traverse.

Applicants respectfully assert that the Examiner misconstrued the special technical feature. In particular, reliance upon US 6,235,313 ("the '313 patent") to defeat "lectin" as a special technical feature is misplaced. Office Action page 6, last paragraph. The '313 patent does not describe the use of any lectin as a *medicament*. Rather, the '313 patent describes the use of microspheres for the delivery of drugs or bioactive molecules. Lectins are not mentioned as drugs or bioactive molecules. The '313 patent mentions that targeting of the microspheres may be modified by incorporating lectins as part of the polymer structure of the microspheres. The lectins are not therefore used as a medicament and, as they form an integral part of the microsphere macrostructure, would not be releasable therefrom or capable of exerting any useful medicinal effect.

The special technical feature of Applicants' claims should be construed as medicinal lectins. Because all of the claims are drawn to compositions comprising or conjugates of medicinal lectins (or nucleic acids encoding same) or the use thereof, unity of invention exists amongst the Groups.

Moreover, to the extent that Groups III-VI and X are classified in the same class and subclass, there is no burden in examining these groups together. A search for documents pertinent to one of these groups is likely to be coextensive for a search for any of the other groups. Furthermore, Groups V and X should also be included with Group III as in each case, the additional peptide/protein component is simply considered a "carrier" or "adjuvant," rather than the therapeutic molecule (i.e., the lectin).

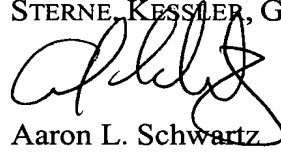
Applicants respectfully assert in light of the arguments previously set forth in the Amendment and Reply to Restriction Requirement filed on November 3, 2003, and wholly incorporated by reference here, that the Restriction Requirement is improper. Accordingly, Applicants request that the requirement be withdrawn, or in the alternative, that Groups III-VI and X, which are classified together, be examined together.

Reconsideration and withdrawal of the Restriction Requirement, and consideration and allowance of all pending claims, are respectfully requested.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor are hereby authorized to be charged to our Deposit Account No. 19-0036.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



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Date: February 27, 2004

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